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Calpine Corporation, et al.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | |
|--------------------------------------|---|-------------------------|
| | : | Chapter 11 |
| In re: | : | |
| | : | Case No. 05-60200 (BRL) |
| CALPINE CORPORATION, <u>ET AL.</u> , | : | (Jointly Administered) |
| | : | |
| Debtors. | : | Civil Case No.08-01286 |

**APPELLEE CREDITORS' COMMITTEE'S COUNTER-DESIGNATION OF
ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

The Official Committee of Unsecured Creditors (the "Committee") of Calpine Corporation, *et al.* (collectively, the "Debtors") submits, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, its designation of additional items to be included in the record on appeal in connection with the Notice of Appeal filed by Elias A. Felluss and the Statement of Issues and Designation of the Record filed by Mr. Felluss in the above-captioned proceedings (Docket No. 7577).

Background

On January 19, 2008, Compania Internacional Financiera, S.A., Coudree Global Equities Fund, Standard Bank of London, and Leonardo Capital Fund SPC (collectively, the "Objecting Shareholders") filed an appeal of certain rulings and orders of the Bankruptcy Court (the "Bankruptcy Court Decisions") with respect to the Debtors' Sixth Amended Joint Plan of

Reorganization, which was confirmed on December 19, 2007. Two subsequent appeals of the Bankruptcy Court Decisions were filed on January 28, 2008, by (i) Mr. Fellus and (ii) David Flair, Avram Ninyo and Merle Root (collectively, the “Flair Appellants”).

The Objecting Shareholders filed an emergency motion with the district court to expedite their appeal and requested a stay pending appeal on January 25, 2008. On January 31, 2008, the Flair Appellants filed a motion to consolidate their appeal with the Objecting Shareholders’ appeal, and to join the Objecting Shareholders’ emergency motions to expedite their appeal and for a stay pending appeal. Mr. Felluss did not move to join the emergency motions to expedite the appeal or for a stay pending appeal. Judge Laura T. Swain granted the Flair Appellants’ motion to consolidate the appeals and approved the Flair Appellants’ joinder request on February 1, 2008. After a hearing on the record, Judge Swain denied the motions to expedite the appeal and for a stay pending appeal.

**Counter-Designation Of Additional Items
To Be Included In The Record On Appeal**

Mr. Felluss did not designate any items from the record in his Statement of Issues and Designation of Record on Appeal filed with the Bankruptcy Court on February 6, 2008. However, Mr. Felluss’ appeal challenges the Bankruptcy Court Decisions, and is therefore directly related to the appeals filed by the Objecting Shareholders and the Flair Appellants. Because Mr. Felluss’ appeal will likely be consolidated with the other two appeals referenced above, and because the parties to those appeals have already designated significant portions of the record, the Committee hereby designates the record items already designated in the two consolidated appeals filed by the Objecting Shareholders and the Flair Appellants to avoid unnecessary, duplicative filings. These relevant designations can be found on the Bankruptcy Court’s docket at Docket No. 7474 (Objecting Shareholders’ record designations), Docket No.

7562 (Debtors' counter-designations) and Docket No. 7565 (Committee's counter-designations).

The Committee respectfully requests that all of these record materials be included in the record on appeal.

Dated: February 14, 2008
New York, New York

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Philip C. Dublin
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